

**TESTIMONY OF
David Etnier
Deputy Commissioner of the Department of Marine Resources**

**The Department of Marine Resources (DMR) is testifying
in Support of**

**L.D. 1857 An Act to Implement the Recommendations of the Task Force On The Planning
and Development Of Marine Aquaculture In Maine**

**Before the Committee on Marine Resources
Sponsored by Representative Bull**

Date of Hearing: February 18th, 2004

Senator Damon, Representative Bull and members of the Joint Standing Committee on Marine Resources, my name is David Etnier, Deputy Commissioner of the Department of Marine Resources and I am testifying on behalf of the Department in support of LD 1857.

Before I begin my comments pertaining to this legislation I would like to publicly express Governor Baldacci's sincere appreciation to the 11 members of the Aquaculture Task Force and the 11 members of the Stakeholder Advisory Panel. The Governor is fully aware of and deeply grateful for the immense volunteer effort put forth by all these citizens of Maine over the last 6 months as they grappled with the difficult charge put before them by the original Governor's bill, LD 1519. The many days and nights they spent away from their jobs and their families are sacrifices this Governor and this Administration do not take for granted and they wished for me to convey this to the Task Force, the Panel and to the Marine Resources Committee.

As you are aware, the legislation before you today represents just one of the many facets of the entire Task Force Report. This is a significant body of work that should only be considered in it's entirety, part of which of course includes the original Resolve which your Committee and the full Legislature passed unanimously a short year ago.

My testimony today will focus on the LD before you. In addition the Department is providing an amendment which reflects changes that we wish you to consider. I would also request the Committee's brief indulgence, before I conclude my comments today, to allow me to touch on other aspects of the Report that are not included in this piece of Legislation.

Sections 1 and 2 of LD 1857: The Department of Marine Resources is testifying in support of these two sections. As the Report notes (page 80) the State has provided "minimal" support for both aquaculture industry development and product promotion. There is admittedly a perception that this Department suffers from a conflict of interest by possessing the multiple responsibilities of regulation, enforcement, development and promotion. A quick review of many state agencies, especially those engaged natural resource industries, would find this to be a common practice. Should the Legislature wish

to clearly move these specific aquaculture responsibilities to other agencies as proposed we are confident that given sufficient resources both the Department of Agriculture, Food and Rural Resources and the Department of Economic and Community Development (DECD) will do a fine job. You will be receiving additional testimony from both Agriculture and DECD regarding these Sections.

Section 3: The Department supports the increase from current aggregate maximum acreage of 250 acres to 500 acres as proposed. Please note that the Task Force request made here would not change the longstanding 100 acre maximum that exists for any single lease site. The increase to 500 aggregate acres is well explained in the text of the Report (pages 49 and 50). To reiterate two of the reasons given: the fallowing of finfish sites is seen as a “valuable management option” that is now required by court order and DMR policy, it is becoming fiscally impossible to accommodate the fallowing requirements, stay within the current 250 acre aggregate limit and continue to operate in a financially sustainable fashion; secondly, under the new MPDES (Maine Pollution Discharge Elimination System) permit finfish sites are likely to move to deeper waters that are more exposed to adverse conditions. The result will be a need for larger individual sites to accommodate the mooring systems. The proposed increase reflects what has clearly evolved as the reality of finfish aquaculture in Maine in the 21st century. The States original desire that aquaculture grow as a small, owner-operator venture has largely proven unreasonable for the finfish sector due to the large amount of capital needed and the large amount of financial risk involved. Economies of scale require larger aggregate operations and more robust financial backing than originally thought.

Section 4: The Department supports this section that eliminates the timeframe within which Department site review must be conducted. The Report clearly states the rationale for this request on pages 51, 52 and 63. We concur that removal of these constraints would better enable us to process applications in a timely fashion. In addition, the current scallop season commences on December 1st of every year. Our current inability to conduct site reviews after November 15th precludes us from being able gather real time data as it relates to that important fishery.

Section 5: The Department offers the following comments on this important section. We support the new language found in the first sentence that makes it explicit that “the Commissioner shall take into account the number and density of aquaculture leases in an area”. This is a clarification of our existing practice. In addition, we are in support of §6072, sub-§A, ¶ F (1) But must oppose paragraph F (2) that references the Land for Maine’s Future Program (LMF). While we concur that it is a reasonable evolution of this statute to include “conserved lands” as defined in §6072, sub-§A, ¶ F (1), we cannot support the addition of “land that has been protected through either fee ownership or conservation easement with funding from the LMF”. We request that the committee consider carefully all the ramifications of inserting the justifiably popular Land for Maine’s Future Program into the leasing criteria for all aquaculture leases. The Committee will be receiving additional testimony regarding this provision from the State Planning Office where LMF is housed.

Sections 6 thru 10: The Department supports the changes that the Task Force wishes to make to the lease process for renewals, transfers and the issuance of limited-purpose (experimental) leases. As proposed, a public scoping session will be required if 5 or more people request it. In addition, the commissioner may hold a full adjudicatory hearing should the information he has received indicate a need. We believe this approach would result in an enhanced ability for public input through a less formalized and intimidating process, i.e. the use of a 30 day comment period followed by a public scoping session if requested. The additional ability for a full adjudicatory hearing would be reserved for those instances that truly merit it. Should the Committee wish to adopt the Task Force recommendations please note that we have in our proposed amendment, language that would clarify that the Commissioner must continue to provide his findings relative to renewals and transfers in writing and that they be consistent with the appropriate criteria.

Section 11: Although the Department opposes the specific language that is proposed in this section we do support the concept and have offered amended language for your consideration. Specifically we are concerned that the proposed language in the Task Force Report is insufficient regarding the public process that a municipality must engage in prior to making a lease decision. Our amendment would add the requirement that a municipality adopt ordinances that establish the procedures to be used for evaluating a lease, that the commissioner must approve that ordinance (as we do now with municipal shellfish ordinances), that the municipality hold a hearing prior to the issuance of any lease and that their findings on each of the criteria be provided in writing.

Section 12: The Department supports the language in this section that clarifies that municipalities do not have jurisdiction over the siting or specifications of structural moorings used for aquaculture lease. We are however opposed to the language that is proposed to eliminate municipal jurisdiction over boat or vessel moorings that are located within the boundaries of a lease site. While we concur that the structural moorings are appropriately within the jurisdiction of the State and the Army Corps of Engineers and are adequately considered by those entities, we do not concur with the Task Force that municipalities should have no say regarding the placement, design and the assessment of fees for boat and vessel moorings located within lease sites.

Finally, as requested earlier, I would like to briefly comment on other aspects of the Report that are not before you today in LD 1857. Specifically I would like to express the Department's commitment to following through on Recommendation VI.2 (page 35) of the Task Force regarding bay management. To that end we have initiated discussions on how best to proceed with the Director of the Coastal Program at the State Planning Office, we are calling for the "development of a comprehensive, area-specific management plan for Taunton Bay" in our "Taunton Bay Assessment" which the committee received last week and we are sponsoring a panel discussion at the upcoming Fishermen's Forum in an attempt to further flesh out this issue. Our intent is to convene a group as requested by the Task Force and to report all progress to your committee.

Regarding the requests for regulatory changes that appear on pages 91 through 96 (Appendices A-2 – A-4), the Department is fully supportive of these efforts to improve the lease hearing process and we propose to proceed with rulemaking as soon as feasible.

Regarding the many other Recommendations that are found within the Report that would not specifically require either statutory or regulatory changes, the Department will be reviewing all the requests and is prepared to report back to this committee with a list of what this and other State agencies can go forward with within existing resources.

I appreciate the opportunity to come before your Committee today and would be glad to answer any questions you may have.